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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	
	)	

To: The Commission

COMMENTS OF McCAW CELLULAR COMMUNICATIONS, INC.

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McCaw Cellular Communications, Inc. ("McCaw"), by its attorneys, hereby submits these comments in response to the Commission's Notice of Proposed Rule Making and Notice of Inquiry[1/] in the above-captioned proceeding.

Introduction and Summary

In the CMRS Second Report,[2/] the Commission established a sound regulatory foundation for the continued growth and development of commercial mobile radio services ("CMRS"). The Commission correctly concluded in that proceeding that existing market conditions, together with enforcement of other provisions of Title II, render the enforcement

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[1/] In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, FCC 94-145 (rel. July 1, 1994) ("Notice").

[2/] In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411 (1994) ("CMRS Second Report").

of tariffing and many other traditional common carrier requirements unnecessary to ensure that rates are just and nondiscriminatory or to protect consumers. The Commission found that enforcement of these requirements on cellular and other CMRS providers would harm -- not advance -- the public interest. Rather, it held that forbearance from unnecessary regulation of CMRS providers will enhance competition in the mobile services market.[3/] Finally, consistent with the intent of Congress,[4/] the Commission assured that like mobile radio services would be subject to consistent regulatory treatment. These principles are equally relevant to consideration of the interconnection and equal access obligations of CMRS providers.

First, the imposition of interconnection obligations on CMRS providers is unnecessary in light of market conditions. As the Commission itself has found, no CMRS provider exercises the bottleneck control over essential facilities that is the essential prerequisite of mandated interconnection. Cellular carriers, moreover, will soon face competition from so-called enhanced specialized mobile radio systems ("ESMRs") and from licensees using the 120 MHz of spectrum recently made available for PCS.

Given that the predominance of mobile traffic originates or terminates on the landline network, interconnection through the local exchange carrier is generally the most technically and economically efficient means of routing calls between wireless networks and will enable subscribers of those networks to communicate with one another. New entrants in the mobile

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[3/] Id. at 1467.

[4/] See, e.g., H.R. Rep. No. 213, 103d Cong., 1st Sess. 490 (1993) ("Conference Report"), H.R. Rep. No. 111, 103d Cong., 1st Sess. 259-260 ("House Report").

services marketplace have demonstrated time and again that interconnection with an existing mobile services network is not necessary to offer service. To the extent that there is sufficient mobile-to-mobile traffic to justify direct connections between CMRS providers, those connections benefit both carriers involved and will occur without the imposition of regulation. Decisions on CMRS-to-CMRS interconnection are best left to the market.

Second, the imposition of interconnection requirements on CMRS providers will serve only to stifle the growth and development of the mobile services industry. Proposals to require such interconnection or the "unbundling" of cellular networks, premised on a misunderstanding of the concept of spectrum "scarcity" in the mobile radio marketplace, demonstrate little understanding of the technology and architecture of those networks and create substantial risks of degraded service for all cellular subscribers without any corresponding public benefits. By seeking to impose requirements solely on cellular operators, moreover, these proposals also threaten to reestablish the very regulatory disparities that last year's comprehensive amendment of Section 332(c) of the Communications Act was intended to correct.

Third, because LECs retain bottleneck control of landline networks, the Commission properly has adopted policies to ensure that CMRS providers can interconnect with those networks.[5/] LEC-to-CMRS interconnection should continue to be governed by contract. Requiring the tariffing of interconnection arrangements between CMRS providers and LECs

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[5/] CMRS Second Report 9 FCC Rcd at 1497-98; see also The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 FCC Rcd 2910, 2913-16 (1987) ("Interconnection Order").

is unnecessary to the implementation of these policies, and could impede the negotiation of agreements tailored to particular marketplace conditions. If necessary to prevent unreasonable discrimination, the Commission could require the inclusion of "most favored nation" clauses in interconnection contracts. Such contracts could also be placed on file for public inspection, so long as confidentiality of material terms can be preserved. The Commission should also extend the requirements of mutual compensation and "good faith" negotiations, long applicable to interstate interconnection arrangements, to intrastate interconnection as well.

Fourth, with respect to equal access, the Commission's principal task is to establish a policy and rules that do not distort the CMRS market or grant regulatory advantages to particular providers. Unlike CMRS-to-CMRS interconnection, equal access is a well-understood concept that has been or will soon be implemented by cellular carriers serving more than 60% of all subscribers. If the Commission determines that the public interest would be served by the equal access obligations, it should apply those obligations uniformly on all CMRS providers. To do otherwise would contravene Congressional intent, distort the market for CMRS services, and unintentionally foster regulatory "gaming" by those providers receiving privileged treatment. Implementation of any equal access requirements must also be accomplished efficiently and effectively, taking into account the costs and burdens that such a policy will impose on CMRS providers. In this regard, the proposed consent decree governing the AT&T-McCaw merger can serve as a helpful guide to the Commission.

I. The Imposition of Interconnection Obligations on CMRS Providers is Unnecessary and Would Impede the Development of CMRS

There is no policy or statutory justification for imposing interconnection requirements on CMRS providers. Unlike the local exchange carriers that are subject to such requirements, CMRS providers enjoy neither monopoly control over essential facilities nor a degree of market power that would give them the incentive and ability to create substantial barriers to entry. New entrants in the mobile services marketplace have demonstrated time and again that interconnection with an existing mobile services network is not necessary to offer service.

For the foreseeable future, interconnection of mobile networks through the local exchange carrier will generally remain the most technically and economically efficient means of routing calls between mobile networks. Moreover, interconnection of wireless networks through the LEC is sufficient to enable subscribers of those networks to communicate with one another. To the extent that there is sufficient mobile-to-mobile traffic to justify direct connections between CMRS providers, those connections benefit both carriers involved and will occur without the imposition of regulation. On the other hand, the imposition of interconnection requirements on CMRS providers will constrain technology and market choices and lead inevitably to price regulation, which itself will impede the introduction of new services.

Significantly, even in the absence of mandatory interconnection obligations, CMRS providers remain subject to ongoing oversight by the Commission. They may not unreasonably discriminate among entities seeking interconnection, and aggrieved parties

retain access to the Commission's complaint procedures if they believe that interconnection has been wrongly denied. The availability of these protections renders specific CMRS interconnection requirements unnecessary.

A. In Light of Current and Foreseeable Market Conditions, Mandatory CMRS-to-CMRS Interconnection is Unnecessary

The imposition of interconnection requirements can only be justified by the presence of sustained market power that is created or enhanced by the refusal to interconnect, or by evidence of a market weakness that will induce competitors to deny interconnection where it is otherwise economically efficient to provide it. There is no evidence that the CMRS marketplace suffers from either defect.[6/] The Commission itself has recognized that existing CMRS providers do not control bottleneck facilities.[7/] Given the rapidly expanding and changing market for mobile telecommunications services, including the impending entry of new providers, there is no basis for imposing interconnection obligations on cellular systems or other CMRS providers.[8/] As the Commission has held, there is sufficient competition

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[6/] See Declaration of Bruce M. Owen, President, Economists Incorporated ("Owen Declaration"), attached hereto as Exhibit A. At McCaw's request, Economists Incorporated undertook an economic analysis of the need for and potential effects of imposing interconnection requirements on CMRS providers.

[7/] Notice at ¶ 124, citing CMRS Second Report, 9 FCC Rcd at 1499.

[8/] The Commission recently acknowledged elsewhere that imposition of interconnection requirements is unnecessary in the absence of essential facilities or market power sufficient to thwart competition. See Expanded Interconnection with Local Telephone Company Facilities, CC Docket 91-141, ¶ 105 (rel. July 25, 1994) (market forces can be relied upon to induce non-dominant carriers to provide interconnection in response to demand; unnecessary to mandate interconnection obligations upon parties that lack market power and do not control bottleneck facilities).

among cellular providers to warrant forbearance from other requirements traditionally applied to non-competitive markets.[9/]

The mobile telecommunications marketplace is becoming increasingly competitive. The Commission is currently in the process of licensing digital broadband personal communications systems ("PCS") that will compete with existing CMRS providers. ESMRs are also consolidating their facilities into a nationwide network.[10/] Digital PCS systems and ESMRs, moreover, are likely to have more effective capacity than cellular systems, which will have to support a substantial analog customer base for the foreseeable future.[11/] Even in advance of the entry of new market participants, the real price of cellular service, after adjusting for inflation, has declined.[12/] Efforts by a number of states and others to "prove" that cellular operators have engaged in anticompetitive behavior are unavailing.[13/] In fact, there is no evidence that cellular carriers have sought to exclude competitors by denying them interconnection.

Nor is there any evidence that the imposition of interconnection requirements on CMRS providers would provide any significant public benefits. As noted above, these

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[9/] CMRS Second Report, 9 FCC Rcd at 1470, 1478-79.

[10/] Owen Declaration at ¶¶ 35-44; accord CMRS Second Report, 9 FCC Rcd at 1470.

[11/] See Owen Declaration at ¶¶ 52-56.

[12/] Id. at ¶ 68.

[13/] Id. at § III.

providers do not control facilities that are essential to their competitors.[14/] Even assuming that CMRS providers did exercise control over such facilities, the presence of at least two such providers in each market would require collusion between or among them in order to ensure that competitors were denied access to the "bottleneck." Such a collusive arrangement is unlikely because it would be relatively easy to detect. Available evidence on market performance, moreover, suggests that CMRS providers behave competitively rather than acting in concert.[15/]

In view of the foregoing, CMRS providers can be expected to interconnect with other CMRS providers when it is efficient for them to do so. Interconnection increases the demand for a provider's services; if one CMRS provider fails to interconnect, other providers will gain competitive advantages from doing so.[16/]

This expectation is borne out by McCaw's own experience. In most cases, McCaw and other wireless carriers interconnect solely through the LEC switch. In a number of markets, however, McCaw has found that there is sufficient traffic between its network and

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[14/] The growing array of competitive access providers ("CAPs") offer wireless carriers and others an additional point of interconnection with the nation's telecommunications infrastructure.

[15/] Owen Declaration at ¶ 93.

[16/] Id. at 27. Where a CMRS provider refuses to provide interconnection, that refusal should be presumed benign in view of the provider's lack of control over bottleneck facilities. CMRS-to-CMRS interconnection should not be deemed the norm, deviations from which must be justified. Unless there is substantial mobile-to-mobile traffic, direct connection between mobile networks is not the most efficient form of interconnection. Id. at ¶¶ 94-99; see also pp. 9-14, infra.

the other cellular system to justify direct interconnection with that system.[17] Direct connection provides route redundancy in the event of abnormally high traffic loading in the LEC switch or in the case of man-made or natural disasters where the landline network is temporarily disabled. Direct connection also reduces costs by eliminating the need to obtain and pay for LEC switching capability.[18]

McCaw decides whether and when to connect directly with another wireless provider by determining the amount of traffic destined for the other provider and using this information to ascertain the number of trunks necessary to support peak busy hour traffic. If it is more economical to route those calls through direct connection rather than through the LEC, McCaw negotiates such an arrangement.[19] Because direct connection is also more economical for the other provider under these circumstances, reaching a mutually acceptable interconnection agreement has not been difficult.[20]

B. The Imposition of Interconnection Requirements Would Impose Substantial Costs on CMRS Providers and the Public

In addition to yielding no benefits, a policy of mandatory interconnection is likely to impose substantial costs on CMRS providers. First, it is likely to lead to the provision of interconnection in situations where the expense of doing so would exceed the value.

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[17] Declaration of Roderick Nelson, Vice President - Engineering ("Nelson Declaration"), attached hereto as Exhibit B, at ¶ 4.

[18] Id.

[19] Id. at ¶ 5.

[20] Id.

Regulation is too imperfect to discriminate accurately between situations in which interconnection is efficient and other situations in which it is inefficient. Requiring the provision of this inefficient interconnection would confer a disproportionate benefit on resellers and other CMRS providers who could obtain interconnection at artificially low prices. Both to avoid lengthy proceedings and as a result of such proceedings, CMRS providers would be induced to provide interconnection even where it is not worthwhile.[21/]

Predominately, CMRS-to-CMRS interconnection through the LEC is likely to be the most efficient form of interconnection for the foreseeable future.[22/] This is so because most traffic carried by a mobile services provider will either originate or terminate on the landline network.[23/] As McCaw's experience demonstrates, direct connection arrangements become efficient only where there is sufficient mobile-to-mobile traffic to justify the costs of such arrangements.

Negotiating direct interconnection arrangements, moreover, requires resolution of a wide range of factors that would be difficult to establish by regulation. Among these factors are traffic engineering; type of connection; signaling format; physical design; administration; and alternate routing plans.[24/] The substantial difficulties that can arise from substituting

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[21/] Owen Declaration at ¶ 104.

[22/] Nelson Declaration at ¶ 3. Cf. Notice at ¶ 126 (Commission does not want to "encourage a situation where most traffic from one CMRS service subscriber must pass through a LEC switch for its traffic to reach a subscriber to another CMRS service, if such routing would be inefficient or unduly costly") (emphasis supplied).

[23/] Nelson Declaration at ¶ 3; Owen Declaration at ¶¶ 90-99.

[24/] Nelson Declaration at ¶ 6.

government mandates for marketplace negotiations can be illustrated by considering just a few of these factors:[25/]

- Would interconnection be required without regard to call volume between the two carriers involved, or should there be a threshold level of traffic before interconnection is required? If so, what would the appropriate level be?

- Would interconnection rules specify the type of connection and configuration? If so, would "one fit all" or would the FCC sanction a range of possible interconnections? If the latter, would each carrier be required to support the entire range of possible interconnections? If not, which ones would a carrier be required to support?

- How would the Commission determine who is responsible for administration and maintenance of interconnection arrangements? Since interconnecting wireless carriers are essentially peers, there is no obvious party to whom administration and operation should fall.

Requiring direct connections when they would not otherwise be efficient would impede technological progress and innovation by exerting a drag on a CMRS provider's ability to introduce new equipment or services. For instance, McCaw has aggressively pursued new technologies such as SS7 in its interconnection arrangements. Additionally, McCaw is converting its interconnections with LECs to SS7 and will pursue the same with other wireless carriers. The imposition of mandated terms, conditions, prices, and configurations for interconnections would introduce a significant time lag in McCaw's introduction of advanced technology for interconnection while the technology was studied by regulators and subjected to public comment.[26/] Neither McCaw nor its customers nor the

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[25/] See id. at ¶¶ 7-10.

[26/] Id. at ¶ 11.

public at large would benefit from this unnecessary delay in the introduction of technological innovation.

Similarly, a CMRS provider seeking to introduce a new switch or network architecture would be unable to do so if interconnecting carriers' facilities are incompatible with the new technology. The innovating provider would have to wait until all carriers were prepared to upgrade or replace their equipment, or maintain two regimes in order to introduce the new technology prior to that point.[27/] In effect, government-mandated interconnection could freeze technology at the level of the lowest common denominator. At minimum, it could severely hamper the ability of CMRS providers to deploy advanced facilities that might obsolesce the networks of interconnecting carriers. Such a result would not only burden the CMRS provider, it would disserve the public by delaying or reducing the benefits of innovation.

The introduction of an interconnection mandate will invite parties to implore the Commission to complete what it has begun by regulating the price of interconnection.[28/] As the Commission well knows, price regulation limits the ability of regulated firms to respond to changes in technology, costs, and demand, thereby deterring new investments, improvements in quality, the introduction of new services, and the entry of competitors.

[27/] Owen Declaration at ¶¶ 104-110.

[28/] Id. at ¶ 107. When the California Public Utility Commission ("CPUC") recently directed cellular carriers to "unbundle" their networks, for instance, it established a price cap scheme to determine the rates for particular service elements. Investigation of the Commission's Own Motion into Mobile Telephone Service and Wireless Communications, Decision 94-08-022 (Aug. 3, 1994).

Such regulation, especially when imposed solely on cellular carriers, deprives them of the flexibility they need to respond to new entrants in the CMRS marketplace. The distorting effects of price regulation are likely to be greatest in industries such as CMRS that are characterized by rapid growth, technological change, and relatively high risk.[29/]

The adoption of price regulation for CMRS providers, which have generally not been subject to such regulation, would also impose expensive and time-consuming cost allocation and jurisdictional separations requirements on them. No cost allocation or separations procedures or studies have been conducted by these providers, and their rates have been established on the basis of market determinations rather than government-set formulas.[30/] Under these circumstances, the rates for interconnection would reflect artificially-established "costs" that would encourage the kind of inefficiencies described above. The Commission has correctly held that price regulation of mobile services is not necessary or desirable in the public interest.[31/] In the absence of any justification for interconnection obligations, there is no rational basis for introducing such regulation now.

[29/] Owen Declaration at ¶ 107.

[30/] The principal costs associated with direct interconnection facilities are (1) lease costs for the copper or fiber facility; (2) operations, administration and maintenance costs; and (3) port costs on switches to make the connections. These costs can be shared or recovered in any number of ways; each of these costs could conceivably be recovered using a different formula, adding to the complexity of any rate regulation scheme. One formula may make sense for small carriers or when traffic volumes are relatively low, while another makes sense to bigger carriers. For instance, expressing costs per minute might be good for small carriers or relatively low traffic volumes, while sharing recurring costs on a fixed basis might be preferable in the case of larger carriers or higher traffic volumes. Nelson Declaration at ¶ 10.

[31/] CMRS Second Report, 9 FCC Rcd at 1478-81.

Far from promoting the development of a robust telecommunications infrastructure, burdening wireless carriers with an unnecessary interconnection obligation will significantly reduce their incentives to deploy new facilities by giving third parties an entitlement to cherry-pick the most desirable of those facilities. Deprived of the competitive edge that such technological advances would confer, wireless carriers would have little incentive to make the significant investments necessary to bring such advances to market.[32/]

C. The Commission Should Not Order Cellular Carriers to "Unbundle" Their Networks or Otherwise Provide Interconnection for Resellers' Switches

The Commission seeks comment on whether to require CMRS providers to offer interconnection to CMRS resellers "in order to provide for switch-based resale of CMRS."[33/] For the reasons set forth above, McCaw believes that mandatory interconnection or "unbundling" of CMRS networks is neither necessary nor desirable, regardless of whether the party seeking interconnection is a facilities-based carrier or a

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[32/] The operational and technical costs associated with imposing interconnection obligations on CMRS providers will frustrate competition by requiring CMRS providers to concentrate their efforts on interconnection rather than expending resources on research and development of new services and designing efficiency into existing systems.

[33/] Notice at ¶ 5. While the Notice speaks of imposing such an interconnection obligation on "CMRS providers," the California Public Utilities Commission has chosen to require only cellular licensees to unbundle their networks to accommodate resellers' switches. Supra, n.28. In addition to the significant technical problems that such an unbundling or interconnection requirement creates, imposing such a requirement solely on cellular operators would reestablish the kind of regulatory disparity among CMRS providers that the amendment of Section 332(c) was designed to eliminate.

reseller.[34] The flaws in the resellers's switch proposals provide additional grounds for the Commission to reject mandatory interconnection with the resellers.

As a threshold matter, the resellers' switch proposals are wholly untested and raise significant technical problems.[35] In proceedings before this Commission[36] and the California Public Utilities Commission,[37] the resellers have provided no specific technical and engineering information to support their proposals rely instead upon switch capabilities and software that have not yet been developed. The resellers have, moreover, oversimplified and ignored significant operational problems and added costs that their proposal would cause to cellular carrier systems.

At best, the resellers' switch proposal would duplicate functions performed by cellular systems (*e.g.*, retention of collection of call detail information) without relieving cellular carriers of the obligation to perform these functions as well. At the same time, the addition of a reseller switch would degrade the quality of service made available to the resellers' customers by forcing calls to be routed through an additional transmission link and deprive customers of existing roaming capabilities. The resellers have failed to provide any evidence

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[34] See also Owen Declaration at ¶¶ 100-103.

[35] In one variant of the resellers' switch proposal, the switch was to have been located between the mobile telephone switching office ("MTSO") and the local exchange carrier's network. In another variant, the switch would have been installed at the cell site.

[36] NCRA Petition for Reconsideration at 10; CSI/ComTech Petition for Reconsideration at 8-9.

[37] Supra, n.28.

that the addition of their switches would provide subscribers with any services that they cannot already obtain from existing cellular carrier switches.

Additionally, the "unbundling" of the radio portion of cellular networks, as recently ordered in California, is unnecessary. Resellers and other new entrants have ready access to radio spectrum through their resale entitlement[38/] and through the Commission's recent decisions to nearly triple the amount of spectrum to be made available for commercial mobile services. With cellular radio channels and switching services already made available to resellers that compete at the retail level, the mandatory interconnection of resellers' switches is not required to promote retail competition.[39/]

The complaints by resellers regarding interconnection[40/] are not sufficient to indicate that the market is not working or that consumers would be made better off by government intervention. As noted above, interconnection may be denied because it is inefficient, and a complaint may really be nothing more than an effort to obtain service at an artificially low price. In many cases in which a wholesale supplier offers service both through company-owned retail outlets and through independent dealers ("resellers"), complaints by the resellers are common. Their existence is not evidence of anticompetitive behavior.[41/]

[38/] Cellular Resale Order, 7 FCC Rcd at 4009. See also 47 C.F.R. § 22.914 (1993).

[39/] Owen Declaration at ¶¶ 18-20

[40/] As the Commission itself has reported, the "relatively few" complaints concerning cellular carriers' alleged denial of interconnection have all come from resellers asserting a right to interconnect their switches with cellular networks. CMRS Second Report, 9 FCC Rcd at 1499.

[41/] Owen Declaration at ¶ 103.

Indeed, the entire reseller switch proposal is a function of inefficiencies created by government interference in the marketplace. The incentive for resellers to seek interconnection is that they would profit from distorted prices created by unbundling requirements, price controls, and with other regulations that subsidize resellers. In California, those regulations require cellular carriers to price their "wholesale" capacity at a rate five percent below the rate charged to the carriers' largest bulk customers. In the absence of this subsidy, which has been created and maintained solely to prop up the resale competition,[42/] it is unlikely that the resellers' would have any economic incentive to install and operate their own switches.

D. The Communications Act Already Accords Protection to Parties Seeking Interconnection with CMRS Providers

As demonstrated above, decisions on interconnection are best left to the market. Even in the absence of mandatory interconnection obligations, however, CMRS providers remain subject to ongoing oversight by the Commission. They may not, for instance, unreasonably discriminate among entities seeking interconnection.[43/] In the rare instance where a denial of interconnection is not justified on the basis of economic or technological efficiency, the aggrieved party will have recourse to the complaint process under Section 208

[42/] Investigation on the Commission's Own Motion into the Regulation of Cellular Radio Telephone Utilities and Related Matters, 36 Cal. P.U.C. 464, 115 P.U.R. 4th 561, Slip. Op. at 88-89 (1990). See also Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain State Regulation Authority Over Intrastate Cellular Service Rates, GN Docket No. 93-252, at p.14 (filed August 8, 1994).

[43/] 47 U.S.C. § 202. Section 332(c)(1)(A) of the Act, 47 U.S.C. § 332(c)(1)(A) expressly denies the Commission the authority to exempt CMRS providers from sections 201, 202, and 208 of the Communications Act.

of the Communications Act.[44] In extreme cases, the antitrust laws remain available as an avenue of redress. In no case, however, is there a justification for the imposition of government-mandated interconnection obligations on CMRS providers. Such obligations would carry substantial costs without conferring any corresponding public benefits.

II. The Commission Should Preempt the States from Regulating CMRS-to-CMRS Interconnection

The Commission seeks comment on whether it should preempt state regulation of CMRS interconnection.[45] As the Commission indicates, it clearly has the authority to do so.[46] As a matter of sound policy, it should preempt state regulations addressing the obligation to interconnect as well as state-imposed requirements that CMRS providers "unbundle" their networks. Section 332(c)(3)(A) already preempts state regulation of interconnection rates, including the rates for intrastate interconnection.[47]

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[44] 47 U.S.C. § 208. The continuing availability of the nondiscrimination requirement and the complaint process contributed to the Commission's conclusion that it could forbear from applying tariffing requirements to CMRS providers. See CMRS Second Report, 9 FCC Rcd at 1478-80.

[45] Notice at ¶¶ 144-145.

[46] Id. at ¶ 145.

[47] Notice at ¶ 131, citing CMRS Second Report, 9 FCC Rcd at 1500. While the Commission has suggested that its preemption of intrastate interconnection rates is contingent on its adoption of requirements for interconnection by all CMRS providers, CMRS Second Report, 9 FCC Rcd at 1499-1500, the statutory preemption of state rate regulation is unconditional. See 47 U.S.C. § 332(c)(3). Indeed, "Congress has explicitly amended the Communications Act to preempt state and local rate and entry regulation of commercial mobile radio services without regard to Section 2(b)" of the Communications Act. Id. at 1506. The statutory language of Section 332(c) evidences a "clear intention" to preempt state rate regulation. Cf. Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, 368

(continued...)

Preemption of state-imposed interconnection requirements is necessary to ensure that the states do not subvert the Commission's efforts to establish a uniform interconnection policy. For the reasons set forth above, that policy should rely on the market to promote the most efficient interconnection arrangements. Regardless of the policy ultimately adopted by the Commission, however, state regulation of CMRS interconnection is fundamentally inconsistent with the goal of a seamless national wireless infrastructure.

The recognition of mobile telephone units, the assignment of frequencies, the supervision of call "hand-offs," and the routing of calls are integral components of a CMRS network. The imposition of state interconnection policies requiring interconnection with CMRS facilities or the unbundling of these and other CMRS network functions would effectively negate nationwide CMRS service by forcing CMRS providers to engineer and construct state-specific CMRS facilities. McCaw's cellular networks have evolved to a point where "local" systems are now served by centralized signalling hubs that support multi-state regions. One can expect that similar network architectures will be common among PCS and ESMR operators. Carriers utilizing such regional architecture could discover that compliance with a multitude of state interconnection and unbundling requirements would likely be cost

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[47/](...continued)
(1986). That intention is buttressed by the legislative history of the provision. See House Report at 260; Conference Report at 494.

If the Commission determines that interconnection obligations are unnecessary, it should preclude the states from adopting their own interconnection obligations. See pp. 5-9, supra. Under those circumstances, the states would have no intrastate interconnection rates to regulate.

prohibitive. At a minimum, compliance with state interconnection requirements would undermine technological innovation by diverting CMRS resources to the re-engineering of existing network architectures.

Preemption in this instance is fully consistent with the Commission's long-standing assertion of plenary authority over the nature and scope of interconnection obligations in the mobile services.[48/] Mobile services, by their nature, "operate without regard to state lines as an integral part of the national telecommunications infrastructure."[49/] Because state interconnection requirements would frustrate the Federal interest in national mobile service,[50/] the Commission should clarify that states are barred from adopting such requirements.[51/]

[48/] Interconnection Order, 2 FCC Rcd at 2912-13.

[49/] House Report at 260.

[50/] See 47 U.S.C. § 332(c)(1)(B); House Report at 261.

[51/] At least one state has adopted a policy to impose unbundling requirements on CMRS providers to facilitate interconnection with those providers. Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications, Decision 94-08-22 (Aug. 3, 1994). The California Public Utilities Commission has required cellular carriers to unbundle the "radio portion" of their service, id. at 75, and subject such carriers to cost-based rate regulation. Id. at 69-70. This proceeding, which was initiated after the enactment of new Section 332, is only the latest manifestation of California's efforts to impose interconnection obligations on cellular carriers. See Re-Regulation of Cellular Radiotelephone Utilities, 36 Cal.P.U.C.2d 464 (1990). These efforts are clearly beyond a state's authority over CMRS providers.

III. Resale Obligations Should be Imposed Uniformly on All CMRS Providers

Congress's principal purpose in amending Section 332(c) of the Act was "to establish a Federal regulatory framework to govern the offering of all commercial mobile services."[52/] Congress was aware that providers of what were, in fact, comparable services were subject to differing regulatory requirements, and sought to promote regulatory parity.[53/] While Congress also recognized that differences among services and market conditions might warrant dissimilar regulation,[54/] the clear thrust and intent of Congress was to avoid differential regulation of CMRS providers.

Consistent with these fundamental principles, the Commission should impose resale obligations uniformly on all CMRS providers. Thus, to the extent that resale is found to foster competition, the networks of all CMRS providers should be made available to competitors and new entrants in the mobile services marketplace. Any other policy would effectively thwart competition by imposing a significant regulatory burden on one class of CMRS providers -- cellular operators -- to the benefit of cellular operators' competitors.

More fundamentally, the Commission also should reconsider its policy of requiring cellular licensees or any CMRS provider to resell capacity to facilities-based competitors that offer service within the former's service territory. A new provider of landline services may need to resell an incumbent's capacity in order to offer service with a geographic reach

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[52/] Conference Report at 490.

[53/] House Report at 260. See also CMRS Second Report, 9 FCC Rcd at 1420.

[54/] Conference Report at 491.

comparable to the incumbent's. The customers of a new entrant in the mobile services marketplace, by contrast, can obtain service outside the reach of the new entrant's facilities by "roaming" on an incumbent's system.

Continuing the five-year window for resale to facilities-based carriers -- particularly if the resale obligation is imposed only on cellular carriers -- would disserve the public interest in promoting competition. Facilities-based competitors eligible to resell the incumbent's capacity could and would delay construction of their own networks, possibly deciding to limit or abandon construction altogether. This is likely to be particularly true for PCS licensees, whose build-out obligation is based on population rather than geographical coverage.[55/] With a population-based build-out requirement, PCS licensees would have little incentive to construct facilities in rural or sparsely-populated areas; with the continued availability of resale capacity to serve those areas, they would have little need to do so.[56/] Given these problems and the de minimis effect on mobile services competition from precluding resale to facilities-based carriers, such a restriction would cause no harm and is clearly just and reasonable.

[55/] Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, Memorandum Opinion and Order at ¶ 155 (Released June 13, 1994).

[56/] To minimize this disincentive, the Commission should at least impose an 18-month limit a CMRS provider's obligation to resell capacity to another facilities-based CMRS provider.